IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2305 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MERUBEN D/O SORABJI PESTANJI BHATPORIYA & W/O LATE PESHI

Versus

ADDITIONAL SPECIAL SECRETARY

Appearance:

1. Special Civil Application No. 2305 of 2001

MR NV GANDHI for Petitioner No. 1-2

MR SP SEN, Ld. AGP for Respondent No. 1-3

MR KK TRIVEDI for Respondent No. 4

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 19/09/2001

ORAL JUDGEMENT

1. Rule. Mr.S.P.Sen, learned AGP waives service of rule on behalf of respondents No.1, 2, and 3 and Mr.K.K.Trivedi, learned Advocate, waives service of rule

on behalf of respondent No.4.

2. Heard Mr.N.V.Gandhi, learned Advocate appearing on behalf of the petitioners, learned AGP, Mr.Sen appearing on behalf of the respondents No.1, 2 and 3, and Mr.K.K.Trivedi, learned Advocate appearing on behalf of the respondent No.4.

3. The brief facts of the present petition are as under:-

3.1 The land bearing Survey No.753-758 situated in the sim of Village Umra belonging to Late Shri Sorabji was acquired by the Gujarat Industrial Development Corporation Authority. Late Shri Sorabji had, therefore, purchased the land bearing Survey No.319/1/1 and 319/1/2 having Block No.418 situated at Village Gothan, Dist. Surat from respondent No.4, by registered Sale Deed.

3.2 In 1990, the original land lord, Shri Dayabhai and his wife, Maniben had challenged the entry No.1850 mutated in favour of respondent No.4, which was certified in 1977. The Assistant Collector has confirmed the entry No.1850 by his order dated 28-2-1991. The Assistant Collector has decided that the Tenancy Act cannot be applicable to the land in question by his order dated 24-3-1992. Thereafter, by the order dated 17-7-1993, the Collector has confirmed the order dated 24-3-1992. Meanwhile, by his order dated 10-6-1992, the Assistant Collector in Suo Motu Revision Applications No.20/1992 and 21/1992 has set aside the entries No.1850 and 2686 and remanded the matter back to the Mamlatdar to decide the question whether respondent No.4 is an agriculturist or not. Late Shri Sorabji and respondent No.4 had, therefore, preferred Appeal No.64/1993 before the Collector, Surat. The Collector, Surat by his order dated 25-5-1994, had confirmed the order passed by the Assistant Collector on 10-6-1992. Both late Shri Sorabji and respondent No.4 had filed Revision Application No.35/1994 before the Additional Special Secretary, Revenue Department, Gujarat. Meanwhile, late Shri Sorabji expired on 18-1-1998. Before passing away, late Shri Sorabji had executed will in favour of the petitioners for the land in question. On 17-7-1999, the Additional Special Secretary had confirmed the order dated 25-5-1994 passed by the Collector, Surat and that order is challenged by the petitioners before this Court.

4. The learned Advocate, Mr.Gandhi, appearing on behalf of the petitioners, submits that the Assistant Collector, Surat has directed the Mamlatdar to decide the

question whether the respondent No.4 is an agriculturist or not. That order has been confirmed by the Collector, Surat and ultimately the Additional Special Secretary has also confirmed the same by his order dated 17-7-1999. Therefore, in light of this fact, the learned Advocate, Mr.Gandhi has submitted that in view of the Government Ordinance No.5/2000, the pending legal proceedings will now stand abated as per the Section 4 of the Ordinance. The Section 4 of the Ordinance of 5/2000 is read as under:

> "4. Abatement of legal proceedings - All proceedings relating to any order made or purported to be made under section 84C of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the principal Act") for contravention of provisions of section 63, so far as it relates to the breach of clause (6) of section 2 of the principal Act, pending before any court, tribunal or other authority or any such proceedings initiated by any such authority on or after the commencement of the amending Act shall stand abated notwithstanding anything contained in section 84C of the principal Act."

Section 5 of the Ordinance provides that:

> "the amendment made by Section 3 shall not affect the validity of any such order referred to in Section 4, made by any court, tribunal or other authority before the date of commencement of the amending Act, which has become final".

In the Explanation of Section 5 of the Ordinance, it is provided that:

> "for the purpose of this section, the word "final" means no appeal, revision or any other proceeding is pending before any court, tribunal or other authority against any such order on the date of commencement of the amending Act".

In light of these provisions, Mr.Gandhi has relied upon the statement of the ordinance and submitted that pursuant to the order passed by the Assistant Collector, Surat, the matter has been remanded back to the Mamlatdar to examine the matter under Section 70A as to whether respondent No.4 is an agriculturist or not on the date of transaction, which has been carried out by respondent No.4. Therefore, Mr.Gandhi has submitted that in pursuance of the order passed by the Assistant Collector,

Oldpad Section, Surat, which has been confirmed by the Collector, Surat as well as Additional Special Secretary, the matter is pending before the Mamlatdar, Oldpad, Surat. Mr.Gandhi has further submitted that in view of the Ordinance No.5/2000, the orders passed by the three authorities are required to be quashed and set aside.

5. However, Mr.Sen, learned AGP has raised objection after referring to the explanation of section 5 of the Ordinance and submitted that the amendment came into effect by notification dated 6-11-2000, whereas the order passed by the Additional Special Secretary on 17-7-1999 had been challenged by the present petitioners by filing the petition on 28-3-2001. Therefore, according to the submission made by the learned AGP, Mr.Sen, at the time when the amendment by notification dated 6-11-2000 came into effect, the present petition was not pending and hence it will not apply to the proceedings of the present petition.

6. However, Mr.Gandhi, learned Advocate appearing on behalf of the petitioners has submitted that in pursuance of the order passed by the Assistant Collector remanding the matter back to the Mamlatdar with a direction to examine whether the respondent No.4 is an agriculturist or not under Section 70A of the Tenancy Act, which has been confirmed by the Collector, Surat as well as the Additional Special Secretary, Revenue Department, Gujarat, the matter is pending before the Mamlatdar at the time of amendment by notification dated 6-11-2000. He has further submitted that in explanation of the Section 5 itself made it clear that the word "final" means no appeal, revision or any other proceeding is pending before any court, tribunal or other authority against any such order on the date of commencement of the amending Act and, therefore, Section 4 of the Ordinance is applicable to the facts of this case and the orders passed by the three authorities are required to be quashed and set aside.

7. Mr.K.K.Trivedi, learned Advocate, appearing on behalf of respondent No.4 has supported the submissions made by Mr.Gandhi on behalf of the petitioners.

8. In light of the submissions made by the learned Advocates, in my opinion, when the Assistant Collector by his order remanded the matter back to the Mamlatdar with a direction to examine whether respondent No.4 is an agriculturist or not, and which order has been confirmed by the Collector as well as the Additional Special Secretary, the matter is pending before the Mamlatdar for

deciding the question whether respondent No.4 is an agriculturist or not and, therefore, considering these facts, Section 4 as well as Section 5 read with Explanation is fully applicable to the facts of the present case. It is also necessary to note that in the amendment of Section 2 of the Guj. 4 of 1995, it is provided that "in the amending Act, in section 2, for the words "shall be deleted" occurring at two places, the words "shall be and shall be deemed always to have been deleted" shall be substituted". Therefore, the restrictions to hold the agricultural land by distance of more than 5 miles i.e. 8 kilometers or the entire area of land shall form one compact block and the residential requirement for personal supervision for cultivation of land, have been removed by the Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Act, 1995. It is also necessary to note the subsequent fact, which has been mentioned by Mr.K.K.Trivedi, learned Advocate appearing on behalf of respondent No.4 that pursuant to the remand order passed by the Assistant Collector, which has been confirmed by the Collector as well as by the Additional Special Secretary, the Mamlatdar has considered the question whether respondent No. is an agriculturist or not and after considering the question, the Mamlatdar has passed an order on 31-1-2001 under Section 2(6) read with Section 70A of the Tenancy Act and came to the conclusion that respondent No.4 is an agriculturist. However, this order is not challenged by either party before the higher authority, but the fact remains that the proceedings was pending before the Mamlatdar, Oldpad Section, Surat at the time of the amendment notification dated 6-11-2000. Therefore, in my opinion, in light of the amending Act No.5/2000 dated 6-11-2000, the order passed by the Assistant Collector dated 10-6-1992, the order passed by the Collector dated 25-5-1994, and the order passed by the Additional Special Secretary dated 17-7-1999 are abated as per amending Act 5/2000 dated 6-11-2000. Accordingly, the aforesaid orders at Annexures A, B, and C to the petition, passed by the three authorities are abated and, now, not having any legal effect of said orders. Accordingly, the present petition is allowed. Rule is made absolute. No order as to costs.

19-9-2001 (H.K. Rathod, J.)

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